

1 Amend 2 Cal. Code Regs. section 18312 to read:

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3 **18312. Rulemaking Procedure.**

4 (a) Definitions.

5 (1) Administrative Procedure Act: All references in this regulation to the
6 "Administrative Procedure Act" are to the provisions of the "Administrative Procedure Act" that
7 were in effect as of June 4, 1974 (former Government Code ~~Title 2, Division 3, Part 1, Chapter~~
8 ~~4.5, Sections 11371 et seq.~~ title 2, division 3, part 1, chapter 4.5, sections 11371 et seq.)

9 (2) California Administrative Register: All references in this regulation to the
10 "California Administrative Register" are to the California Administrative Register as set forth in
11 Government Code ~~Section~~ section 11409 as that section existed on June 4, 1974, or to any
12 successor publication of the Office of Administrative Hearings, as defined in subdivision (a)(4)
13 of this regulation.

14 (3) Notice: The notice of the adoption, repeal, or amendment of any Commission
15 regulation shall include all of the following:

16 (A) A statement of the time, place, and nature of the proceedings;

17 (B) Reference to the authority under which the regulation is proposed and reference to
18 particular code sections or other provisions of law which are being implemented, interpreted, or
19 made specific;

20 (C) Either the express terms or an informational summary of the proposed action.

21 (D) A cost estimate prepared as prescribed by the Department of Finance.

22 (4) Office of Administrative Hearings: All references in this regulation to the "Office of
23 Administrative Hearings" are to the Office of Administrative Hearings as set forth in
24 Government Code ~~Sections~~ sections 11371 et seq., as those sections existed on June 4, 1974, and

1 to any state agency that succeeds the Office of Administrative Hearings, including the Office of
2 Administrative Law.

3 (5) Regulatory Action: "Regulatory action" includes the adoption, repeal, or amendment
4 of any Commission regulation.

5 (6) Trade or Industry Publication: "Trade or industry publication" includes the
6 California Administrative Register.

7 (b) Adoption, Amendment, and Repeal of Regulations.

8 (1) The Commission or Commission staff may schedule a public "interested persons"
9 meeting to solicit comment from the public on any topic within the jurisdiction of the
10 Commission, in advance of either a prenotice hearing, if any, or an adoption hearing on a
11 proposed regulation. Announcement of this meeting shall be posted on the Commission website
12 and mailed (either in tangible form or electronically) to every person who has filed a request to
13 be included on the applicable mailing list and to such other persons or groups the Commission
14 believes may be interested in the matter.

15 (2) The Commission or Commission staff may schedule a prenotice hearing on any
16 regulation that will be the subject of Commission regulatory action in the future. The purpose of
17 the prenotice hearing is to permit the Commission to consider and accept public comment
18 regarding regulatory action proposed by the Commission staff. Any regulatory action to be
19 considered at a prenotice hearing shall be publicized consistent with Government Code ~~Sections~~
20 sections 11120-11132.

21 (3) At least 30 days prior to the adoption, amendment, or repeal of any regulation, notice
22 shall be provided as follows:

23 (A) Publication in a newspaper ~~or~~ of general circulation or in a trade or industry

1 publication as prescribed by the Commission.

2 (B) Filing with the Rules Committee of each house of the Legislature.

3 (C) Mailing (either in tangible form or electronically) to every person who has filed a
4 request for notice thereof with the Commission. At the discretion of the Commission, notice
5 may be mailed to other persons or groups the Commission believes may be interested in the
6 proposed action.

7 (D) Delivered to the Office of Administrative Hearings for publication in the next issue
8 of the California Administrative Register as prepared by that office.

9 The failure to mail notice to any person as provided in ~~Section~~ section 11423 as that
10 section existed on June 4, 1974, shall not invalidate any action taken by the Commission.

11 (4) The Commission shall consider the regulatory action on or after the date and time
12 designated in the notice, and shall afford interested persons an opportunity to comment. Written
13 comments should be submitted to the Commission no later than 12:00 p.m. of the business day
14 preceding the day of the hearing to afford them adequate time to fully consider the comments.
15 Any regulatory action to be considered shall be publicized consistent with Government Code
16 ~~Sections~~ sections 11120-11132.

17 (5) Where consideration of Commission regulatory action is continued to another
18 meeting date, announcement of the change in date shall be posted on the door of the hearing
19 room or announced at the Commission meeting. No additional notice pursuant to subdivision
20 (b)(2) of this regulation is required.

21 (6) The Commission or Commission staff may schedule additional Interested Persons
22 Meetings, Prenotice Hearings, or Adoption Hearings on any given item.

23 (7) Once the Commission has approved the adoption, repeal, or amendment of any

1 Commission regulation, the Commission shall submit to the Office of Administrative Hearings,
2 for filing with the Secretary of State, one certified copy of any regulation adopted, repealed, or
3 amended with a citation to the statutory authority pursuant to which the regulation was adopted,
4 and four additional copies of the regulation. The Commission shall also submit one certified
5 copy of the regulation to the Rules Committee of each house of the Legislature.

6 (8) The Commission shall retain a rulemaking file pertaining to each Commission
7 regulatory action. The file shall contain the record of the hearing at which the Commission took
8 the regulatory action and other materials pertinent to the regulatory action.

9 (c) Adoption of Emergency Regulations. The Commission may adopt, amend, or repeal
10 regulations on an emergency basis. The procedures set forth below, and not the procedures
11 contained in subdivision (b) of this regulation, shall apply to Commission emergency regulatory
12 action.

13 (1) In order to adopt an emergency regulation, or to make an emergency amendment or
14 repeal of a regulation, the Commission shall make a written finding of emergency, which shall
15 include a statement of facts constituting the emergency and a statement that the Commission's
16 regulatory action is necessary for the immediate preservation of the public peace, health and
17 safety, or general welfare.

18 (2) The Commission shall file a copy of the emergency regulation and the documents set
19 forth in subdivision (c)(1) of this regulation with the Office of Administrative Hearings, to be
20 filed with the Secretary of State, and shall file a copy with the Rules Committee of each house of
21 the Legislature.

22 (3) Unless otherwise provided by the Commission in a written instrument filed with, or
23 as part of, the regulation or order of repeal, any emergency regulatory action shall become

1 effective upon filing and shall remain in effect for 120 days.

2 (4) The Commission may make the emergency regulation, amendment, or repeal
3 permanent pursuant to subdivision (b) of this regulation. Where the Commission makes an
4 emergency regulatory action permanent pursuant to subdivision (b) of this regulation prior to the
5 expiration of the 120 days set forth above, the Commission shall transmit to the Office of
6 Administrative Hearings and the Rules Committee of each house of the Legislature a
7 certification that the action has been made permanent.

8 (d) Review by the Office of Administrative Hearings.

9 (1) The Office of Administrative Hearings shall review any Commission regulation
10 subject to Commission regulatory action for compliance with the form and style requirements of
11 the Secretary of State.

12 (2) If the Commission's regulatory action complies with the prescribed form and style
13 requirements of the Secretary of State, the Office of Administrative Hearings shall file the
14 regulation, amendment, or repeal promptly with the Secretary of State.

15 (e) Effective Date of Commission Regulatory Actions.

16 (1) Commission regulatory actions shall become effective 30 days after filing with the
17 Secretary of State, except for the following:

18 (A) Where the Commission provides in a written instrument filed with, or as part of, the
19 regulation or order of repeal, a specific effective date, the regulatory action shall be effective on
20 that date.

21 (B) Any emergency regulatory action shall become effective upon filing with the
22 Secretary of State and the Rules Committee of each house of the Legislature pursuant to
23 subdivision (c)(2) of this regulation, unless ~~subdivision~~ subsection (e)(1)(A) of this regulation

1 applies.

2 (C) Regulations prescribing the Commission's organization or procedures shall become
3 effective upon filing with the Secretary of State, unless ~~subdivisions~~ subsection (e)(1)(A) or
4 (e)(1)(B) of this regulation apply.

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6 COMMENT: On March 6, 1991, in the case of *Fair Political Practices Commission v. Office of*
7 *Administrative Law and Linda Stockdale Brewer*, Sacramento County Superior Court, Case No.
8 512795 (affirmed by Court of Appeal, Third District (April 27, 1992), Case No. C010924
9 [unpub. opn.]), the court determined that the Fair Political Practices Commission's procedures
10 for adopting, amending, or repealing regulations are subject only to those provisions of the
11 Administrative Procedure Act in effect on June 4, 1974, which was the date on which the voters
12 adopted the Political Reform Act of 1974. This regulation is therefore based on the requirements
13 of the provisions of the Administrative Procedure Act existing on that date. On June 4, 1974, the
14 pertinent provisions of the Administrative Procedure Act were located in former Government
15 Code, Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et seq.

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17 NOTE: Authority cited: Sections 81014 and 83112, Government Code.
18 Reference: Sections 11371 et seq., Government Code, as those sections existed on June 4, 1974;
19 Sections 81013, 81014, and 83112, Government Code; *Fair Political Practices Commission v.*
20 *Office of Administrative Law and Linda Stockdale Brewer*, Sacramento County Superior Court,
21 Case No. 512795 (affirmed by Court of Appeal, Third District (April 27, 1992), Case No.
22 C010924 [unpub. opn.]).
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